IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 947 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

M.S. PANDYA

Versus

HARSHADRAI DHIRAJLAL

Appearance:

MR MG NAGARKAR for MR SN SHELAT for Petitioner

MR PR RAVAL for Respondent No. 1

MR AJ DESAI, APP, for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/09/98

ORAL JUDGEMENT

1. This appeal arises out of the judgment and order of the learned Metropolitan Magistrate, Court No.8, Ahmedabad, passed on 17th February, 1990, in Summary Case No.1304 of 1986, acquitting respondent No.1 of the charges under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act. The Food Inspector, Ahmedahad has, therefore, challenged the said judgment and order in

this appeal.

2. The facts of the case, in narrow compass, are are that the appellant-original complainant collected the sample of asafoetida (Hing) at about 10 o' clock in the morning of 1st April, 1986 and after following the due procedure, sent the same for analysis to the Public Analyst. The Public Analyst after getting the sample analysed, sent his report dated 3rd May, 1986 to the effect that the sample did not conform to the standards of provisions laid down under the Prevention of Food Adulteration Act. On that basis, a draft complaint was prepared and sent to Local Health Authority along with all relevant papers for giving consent for prosecution under Section 20(1) of the Prevention of Food Adulteration Act. The concerned authority, after scrutiny of the papers, gave sanction for prosecution under Section 20 subsection (1) of the said Act. The complaint was, therefore, lodged on 15th September, 1986 as against sanction dated 10th July, 1986.

3. The learned trial Magistrate, ultimately, came to conclusion that because the sanction/consent did not disclose the reasons for giving the consent nor it disclosed the details of documents perused, the consent was bad in the eye of law and, ultimately, recorded the judgment and order of acquittal of the accused-respondent No.1 herein.

4. The appellant-complainant has, therefore, challenged the said judgment and order in this appeal.

5. Mr. M.G. Nagarkar, learned advocate appearing for the appellant, submitted that the learned Magistrate has acquitted respondent No.1 only on the ground of an invalid sanction for want of explicit reasoning for according sanction. Mr. Nagarkar submitted that in view of the decision of this High Court in Harshvadan Dahyalal Sevak, Food Inspector v. Nareshbhai Devandas Vaghvani and Another, 1991(2) G.L.H. 615, the law is now settled and a sanction cannot be held to be bad only on this count. Mr. Nagarkar, therefore, urged that since no other infirmity is found in the prosecution case, the order of acquittal may be set aside by allowing the appeal and respondent No.1 may be convicted for the offence with which he is charged.

6. Mr. K.R. Raval, learned advocate appearing for respondent No.1 has opposed this appeal. According to him, the sanction, which is given in the instant case, is not legal and valid and against the basic concept of

Section 20 of the Prevention of Food Adulteration Act. Giving of sanction is a condition precedent for filing a complaint and, therefore, Mr. Raval urged that the decision arrived at by the learned Magistrate is just, legal and proper.

6.1 Mr. Raval submitted that, in addition to the defective sanction, there is another factor which goes against the prosecution case. While drawing attention of this Court to the report of the Public Analyst, Mr. Raval submitted that the sample was received by the Public Analyst on 2nd April, 1986. The sample was examined on 16th April, 1986 and the report was signed on 3rd May, 1986. He further submitted that the authority who signed the report, i.e. the Public Analyst himself, had not analysed/examined the sample as can be seen from the report, wherein the Public Analyst certifies that he had caused the sample to be analysed. Mr. Raval's contention is that the office of the Public Analyst is such where a number of samples are received and examined and, therefore, the person who analysed the sample ought to have been examined before the Court to prove the contents of this report. The possibility of intermingling of reports, analysis and samples cannot be ruled out because of lapse of time between date of receipt, date of examination and date of signing of the report. This being so, while placing reliance on the decision of this High Court in the case of State of Gujarat v. Ramniklal Jesang Vora and Ors., Criminal Appeal No.374 of 1987, dated 30th May, 1996, Mr. Raval urged that this appeal cannot be entertained and may be dismissed. Mr. Raval has shown to this Court a xerox copy of the certified copy of the judgment.

7. Only points that are urged and need to be considered by this Court in this appeal are (1) whether the learned Magistrate was in error in considering the sanction/permission granted by the Local Health Authority under Section 20 (1) of the Food Adulteration Act as defective or invalid and (2) whether reliance can be placed on the report of the Public Analyst in light of the defects pointed out by respondent No.1.

8. On perusal of the complaint, it transpires that a draft complaint along with relevant papers were sent to the Local Health Authority, namely, the Deputy Municipal Commissioner (A) of Municipal Corporation of Ahmedabad, who, in turn, passed an order "scrutinized and sanctioned", on 10th July, 1986 and, on basis of that, the complaint was lodged on 5th September, 1986. It was argued that sanction is a condition precedent in light of

the provisions of Section 20 of the Act. Now, if that provision is perused, it transpires that, sanction is required before instituting a complaint. The provisions start with a non-obstante clause and puts strict embargo as to requirement of sanction. But that embargo is for institution of a complaint. Now, in the instant case, the sanction is given on 10th July, 1986 and the complaint is lodged on 5th September, 1986. It, therefore, cannot be said that the sanction was not given prior to the lodging of the complaint. Another point that was argued was that the complaint was already prepared before sending the papers for obtaining the sanction as if giving of permission/sanction is a rule, routine or empty formality. It may be noted that it was only a draft complaint subject to approval by the concerned authority. A draft complaint would assume shape of a complaint only when it is instituted and, therefore, mere drafting of a complaint before giving of sanction cannot be adversely viewed nor can it be said that complaint lacks sanction. It, therefore, cannot be charged that it was prepared in anticipation of approval or under presumption of approval by the sanctioning authority. That point advanced on behalf of respondent No.1, therefore, cannot be upheld.

9. However, it is always not necessary that such orders are required to vocal. The word used "scrutinized" itself means scrutiny of papers produced before it and consequent application of mind therefor. Therefore, there is no substance in argument on behalf of respondent No.1 that because details of papers perused and reasons are not given, the sanction is bad in the eye of law. This question is set at rest by a decision of a Division Bench of this Court in Harshvadan Dahyalal Sevak, Food Inspector v. Nareshbhai Devandas Vaghvani and Another, 1991(2) G.L.H. 615 relied upon by Mr. Nagarkar and, therefore, the learned Magistrate was definitely in error when he concluded that the sanction given is bad in the eye of law. However, considering the report of the Public Analyst, it transpires that the sample was not examined on the date on which it was received. The report was not signed on the date on which the sample was examined. The report is signed by a person, who has himself not analysed the sample and the person who signed the report or analysed the sample is not examined before the learned Magistrate. It would, therefore, be not safe to place reliance on this report. The possibility of intermingling of samples and report even by a bona fide mistake cannot be ruled out and, therefore, reliance cannot be placed on this report. Same view is taken by this Court earlier in its judgment

dated 30th May, 1996, in Criminal Appeal No.374 of 1987, wherein relying upon earlier decisions of this High Court in several other cases, it was observed as under :-

> "7. On other point also, I see no justification to interfere with the finding of the learned Judge below. No doubt, the sample was sent to the laboratory at Bhuj within reasonable period, and the sample article was analysed on 18th May, 1984, but the report was prepared and signed on 25th May, 1984. Thus, it follows that seven days after the analysis, the report was prepared and signed by public analyst. It also transpires that the public analyst did not personally analysed the sample sent, but he caused the sample to be analysed through other members of the laboratory. When such are the facts emerging on record, what can be the effect thereof must not be left out of sight. When a similar question arose before this Court twice, once in the case of Babubhai Ranchhodbhai Chauhan v. State of Gujarat, Criminal Revision Application No.2936 of 1995 and secondly in the case of State of Gujarat v. Chunilal Nanalal Jaiswal Criminal Appeal No.200 of 1987, relying upon the decision of the Bombay High Court in Criminal Appeal No.818 of 1969 and Criminal Appeal No.1008 of 1967, it is laid down that if the report is not prepared and signed by the analyst on the same day when the sample sent to him is analysed, the report prepared will cease to have any evidentiary value. The view is accordingly taken so that the result of one sample may not be mixed or linked with the another sample and the accused may not have to suffer because of the mistake on the part of the laboratory. It was held so with a view to be sure and certain about the report of the very sample and no other."

10. In the result, although the ground on which the appeal is preferred is made out successfully, the appeal cannot be allowed. The judgment and order of acquittal recorded by the learned Magistrate, though based on an erroneous reasoning, has to be upheld, for the reasons stated above. In view the above discussion, the appeal must fail and is hereby dismissed.

[A.L. DAVE, J.]

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